

**United Parcel Service and Darwin K. Nall. Case 11-  
CA-10356**

24 February 1984

**DECISION AND ORDER**

**BY MEMBERS ZIMMERMAN, HUNTER, AND  
DENNIS**

On 6 July 1983 Administrative Law Judge James J. O'Meara Jr. issued the attached decision. The General Counsel filed exceptions and a supporting brief. The Respondent filed a brief in opposition.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order.

**ORDER**

The recommended Order of the administrative law judge is adopted and the complaint is dismissed.

**DECISION**

**STATEMENT OF THE CASE**

JAMES J. O'MEARA, JR., Administrative Law Judge: The complaint in this case was issued on May 6, 1982, and is based on a charge filed by Darwin K. Nall on March 29, 1982. The complaint alleges that the Respondent, United Parcel Service, Inc., the Employer of Darwin K. Nall, refused to transfer that employee from one of the Respondent's divisions to another and that its reason for refusing to transfer was because the said employee was a union member who engaged in union or concerted activity for the purpose of collective bargaining and other mutual aid and protection and that such conduct on the part of the Respondent comprises unfair labor practices and violates Section 8(a)(1) and (3) of the Act. The Respondent denies that it has violated the Act.

The case was heard in Charlotte, North Carolina, on September 29-30, 1982. The parties waived oral argument and filed briefs which have been received and considered.

Based on the evidence of record, including the testimony and demeanor of the witnesses, and in consideration of the briefs filed by the parties, I make the following

**FINDINGS AND CONCLUSIONS**

**I. JURISDICTION**

The Respondent is now and has, at all times material herein, been an Ohio corporation engaged in interstate motor transportation and delivery of parcels of merchandise under a certificate of convenience and necessity issued by the Interstate Commerce Commission. Re-

spondent maintains operational centers in many States of the United States, including Charlotte, North Carolina, the facility where the issues in this case arose.

During the past 12 months, a representative period, the Respondent, in the course and conduct of its business, derived gross revenues in excess of \$50,000 in the transportation of parcel freight from and to the State of North Carolina directly from, and to, points outside the State of North Carolina.

Accordingly, I find that the Respondent is, and at all times material herein was, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

I further find that it will effectuate the policies of the Act to assert jurisdiction in this case.

**II. THE CHARGING PARTY**

Darwin K. Nall is an employee of the Respondent and a member of, and shop steward for, the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Teamsters Local Union No. 71, which is a labor organization within the meaning of Section 2(5) of the Act.

At all times material herein the Union was a party to a certain collective-bargaining agreement with the Respondent, which agreement had been in effect from May 1, 1979, to April 30, 1982.

**III. THE FACTS**

United Parcel Service, Inc. (the Respondent), is engaged in the pickup, transportation, and delivery of packages in the continental United States. To perform such services the Respondent maintains various operating centers for sorting and distributing customers' parcels which have been received for delivery by the Respondent. Delivery vehicles are located at these facilities and are loaded with parcels in a manner designed to provide for the expeditious delivery within certain local designated areas or for forwarding to more distant areas. Upon performing the delivery of such packages on the aforementioned local route, the driver, having picked up packages for delivery from customers, returns to the facility where the newly received packages are sorted and integrated into Respondent's system.

The Company is divided into approximately 60 operational units called districts including the West Carolina District which is headquartered in Charlotte, North Carolina. The principal distributing units within each district are its "Centers" which vary in size depending on the package volume in the area where they are located. To facilitate the movement of packages throughout the Respondent's system, it maintains "Hubs" which are large package sorting facilities. Frequently, a Hub and a Center may be located in the same building. In the facility in Charlotte the Hub and several Centers are located in a single building.

The principal functions undertaken at the Charlotte Hub comprise the unloading of packages picked up by route drivers and injecting them into the Respondent's system which comprises, at this step, the sorting and distributing of the packages along a conveyor belt which

accomplishes the reloading of the packages into other transportation vehicles which move the packages to their destination centers or to another Hub from which they would be more specifically broken down according to destination location for delivery to the addressee. The Charlotte Hub and Center are separate and distinct operational units, each having its own management and separate seniority lists for the employees working in each of the facilities.

The basic instrument for package sorting among the Charlotte Centers is a piece of equipment known as the "sortrac." It is an automatic conveyor system along which packages travel and are mechanically diverted to secondary conveyor belts depending on their ultimate destination within the delivery area served by the Charlotte Center. The packages are placed on the main conveyor belt by a positioner who locates each package so that it can be read further down the conveyor by a keyer. The keyer reads the destination address and then enters a two-digit code into the equipment thereby determining the auxiliary conveyor belt onto which the package automatically will be diverted. As the packages come off the auxiliary conveyor belts or slides they are placed on the floor by stackers. Finally preloaders place the stacked packages into delivery vehicles completing the Center sorting and loading cycle. Among the various functions performed in the sortrac, the keyer job is by far the most demanding of skill and the most critical to the success of the operation. It requires an operator to read, recognize, and properly code packages moving along the conveyor belts at the rate of approximately one every 2 seconds or approximately 1700 packages per hour. There are two keying stations on the sortrac which permits the equipment to process up to 3400 packages per hour. In order to accurately perform, a keyer has to be familiar with the very large number of addresses throughout the geographic area covered by the Charlotte Centers. Prior to 1981, the Charlotte sortrac was operated by full-time personnel and ran from approximately 10 p.m. until 8 a.m. the following morning. Although the sortrac was in operation for approximately 10 hours a day, packages arrived at the Charlotte Center around the clock. To eliminate the "peaks and valleys" aspect of the sorting process and to spread the activity over the 24-hour operating period of the Charlotte Center, the Respondent decided to convert the sortrac from one full-time shift to three part-time shifts working throughout the day and night. Charlotte District Manager Jim Hanley, the top operating official in the West Carolina district, discussed the reorganization of the sortrac with representatives from Teamsters Local Union No. 71, the collective-bargaining agent for part-time and full-time Hub and Center employees in Charlotte.<sup>1</sup> After the matter had been resolved, Hanley and District Labor Manager William Richard met with the Local 71 business agent, Jimmy Wright, to discuss the implementation of the Company's plan for reorganizing the sortrac. This

discussion centered around the reassignment of current full-time sortrac employees into other full-time jobs within the Charlotte Center. They also discussed staffing three part-time jobs which would become available on the new sortrac shifts. Hanley and Richard requested of the Union that part-time employees be allowed to transfer from the Hub to the sortrac to fill three vital new keyer vacancies. They explained that the Company contemplated offering the keyer jobs to the most senior primary sorters in the Hub. Applications for such transfer were to be limited to primary sorters because they were the most skilled package sorters in the Charlotte Hub and those skills were most comparable to the ones needed for the keyer positions. Both Hanley and Richard explained to Wright that these transfers would be one time movements only and that no further transfers would be allowed. All other vacancies on the new sortrac shifts were to be filled from the outside. Wright did not object to the procedure as set forth by Hanley and Richard.

After that meeting, Wright and Charlotte sortrac Manager Lee Adams contacted "noon-day" and "twilight" shift Hub managers to inform them about the reorganization plan and to have them identify candidates for the keyer jobs. There were three openings to be filled by primary Hub sorters—two from the noonday sort who would work on the new noonday sortrac shift and a third primary sorter from the Hub midnight shift who would work on the midnight to morning sortrac shift. Marty James, the supervisor of the noonday Hub sortrac, was contacted by Adams in early May 1981 and asked about the two vacancies on the new noonday sortrac shift. Adams asked James to survey his primary sorters and determine if any were interested in becoming keyers on the sortrac. James was told to offer the position to the two most senior primary sorters who were interested in the transfer.

James surveyed his primary sorters and determined that the most senior employees who wanted to make the move were Vince Cline and Wayne Lee. James identified the two employees to Adams. Adams made a similar request to Harry Wolfe, Hub manager on the midnight shift. Wolfe identified Lawrence Sloan as the most senior primary sorter on his shift who wanted to become a sortrac keyer. Adams advised Richard of the three nominees.

Richard met with Wright in mid-May and advised him of the identity of the three employees who were the most senior primary sorters interested in the transfers to the new keyer positions. The names given to Wright were those of Lee, Cline, and Sloan. Wright made no objections to the proposed transfer or to the nominees.

In accordance with this procedure, the Respondent transferred Lee, Cline, and Sloan on or about June 9 to the Charlotte Hub to the sortrac. These three employees retained their full company seniority and were entered, after the transfer, at the top of the new seniority list which was prepared for each of the three sortrac shifts.

Notwithstanding the fact that it was the Company's position that Lee, Cline, and Sloan were one-time transfers, a number of Charlotte Hub employees including several on the noonday sort inquired about transferring

<sup>1</sup> The Respondent was unable to obtain union acquiescence to the reorganization of the sortrac and the matter was resolved by the National United Parcel Service—Teamsters Grievance Committee which decided that the Respondent had a contractual right to institute the changes contemplated for the Charlotte sortrac.

to the sortrac.<sup>2</sup> Subsequent to their request to transfer on July 30, 1981, 15 Hub employees, including Nall, filed a grievance that they be allowed to move by seniority to new positions being opened on the sortrac ahead of any junior part-time employees or new hires from the outside. The grievance, submitted by Wright to the Company, was denied. Hanley and Richard discussed this grievance with Wright and advised him that the employees had no contractual right to transfer and reminded him that the transfers of Lee, Cline, and Sloan had been agreed to by the Union on the basis that they would be one-time movements.

After the Company's denial of the aforescribed grievance, one Tracey Newsome was hired as a stacker on the noonday sortrac. In October 1981, she began training for a keyer job in order to serve as a backup or cover employee for vacations, personal holidays, and other times when Lee, Cline, or Sloan were absent. Newsome continued to serve in a backup capacity for the keyer position until February 1982, when Cline was promoted to a supervisory position, at which time Newsome replaced him as keyer on the noonday sortrac shift.

Shortly after Newsome began training to cover as a keyer, Darwin Nall filed a grievance complaining that Newsome, an employee junior to him, had been employed to be a keyer despite his repeated requests to transfer to that position. Less than a month later, Nall filed a second grievance requesting that he be trained as a keyer instead of Newsome. The Company denied both of Nall's complaints and, in accordance with the provisions of the collective-bargaining agreement, both grievances were then presented to the Atlantic Area Parcel Grievance Committee for its consideration. The committee denied the grievances. The group grievance filed by 15 employees comprising the requested transfer was withdrawn by the Union in June 1982, following the negotiation of a new collective-bargaining agreement which, for the first time, provided for part-time employees the right to bid on and transfer to vacancies in other phases of the Company's operations.

During July, Darwin Nall became aware of the transfer of Cline, Lee, and Sloan from the Hub to the sortrac. Upon learning that the Company had transferred these three employees from the Hub to the sortrac, Nall contacted several supervisors in an effort to get himself in a position to transfer to the sortrac. Nall spoke, at this time, to Supervisor Marty James about transferring from the Hub to the sortrac. James told Nall that he had nothing to do with the transfers and directed Nall to contact Lee Adams the sortrac manager concerning the transfer. Nall contacted Adams and asked if he needed anyone else to work on the keyer machine in the sortrac. Adams told him that the Respondent had hired all the employees it needed and did not need more. Nall identified himself to Adams and asked if he would keep him under consideration for the job. Adams acknowledged that he would. Adams also told Nall during this conversation to give his name to Manager Bill Richard in order to be considered for a job in the sortrac area.

<sup>2</sup> The collective-bargaining agreement between the Respondent and Local 71 makes no provision for any contractual right to a transfer such as the employees of the Charlotte Hub had requested.

Nall has been employed by the Respondent for 3-1/2 years as a "pickoff man" in the location known as the Hub. In October 1979, Nall was tried out as a "small sort" operator by spending a couple of hours on his shift for several days performing such tasks. He was returned to his "pickoff job" and an individual was hired from outside the Company for the small sort task.

In January 1980, Nall became a shop steward for the Union. His functions as a shop steward entailed the operations in the Hub and, since there was no shop steward in the Center, he engaged himself in that location also. As a shop steward, Nall filed, or was responsible for the filing, of some 25 to 30 grievances most of which had to do with supervisory employees performing bargaining unit work. As a result of this activity, he was told to "stay out of" the sortrac area by various supervisors who also told him that his stewardship was limited to the Hub area.

During Nall's efforts to obtain a transfer from the Hub area to the sortrac area in the Center, he was advised by Supervisor John Fisher that the Company's policy precluded transfers of part-time employees from the Hub to the Center or sortrac and that the transfers of Lee, Cline, and Sloan were "one time only" transfers necessitated by the need to find qualified personnel to staff the newly opened sortrac. These qualified personnel came from the Hub facility and were "primary sorters" which functions required the skills closest to that needed for the keyer job in the new sortrac facility. He advised Nall that since it was the Company's policy not to transfer part-time employees from the Hub to the Center he would not be transferred.

Nall was tested for the position of "small sort" operator in October 1980. He did not pass the test. Others who did not pass the test were later retested for possible transfer to the small sort task. Nall, since he felt he was "not cooperated with," did not retake the test and continues today as a "pickoff man" which was the task to which he was originally assigned as employee by the Respondent.

The policy of the Respondent of not transferring part-time employees to the Center from the Hub, or from one facility to another, was maintained in order to minimize the necessity to train personnel for multiple tasks required by the several facilities of the Company. The Respondent deemed that the expense of such training was not warranted.<sup>3</sup> Other than Lee, Cline, and Sloan, no other part-time employee was transferred to the Center from the Hub. Two boxline employees, Hester and Sloan, did do Center work while employed by the Hub division due to the necessity to gradually integrate the "boxline charge" into the sortrac system. However, they were not transferred from the Hub to the Center during this period.

<sup>3</sup> The current collective-bargaining agreement specifically provides for the opportunity to such part-time employees to bid on such jobs available in several facilities maintained by the Respondent; however, this contract provision was not in the contract existing at the time of Nall's complaint.

### Discussions and Conclusions

The question to be determined in this case is whether the Charging Party, Darwin K. Nall, was denied a transfer to the Charlotte sortrac because of his union activities in violation of Section 8(a)(1) and (3) of the Act.

The Respondent contends that the transfer of part-time personnel between its facilities was contrary to its policy and that the application of the policy is the reason that Nall was not transferred. The Respondent has adopted such policy in order to minimize the expense of training personnel to function in a multiplicity of tasks peculiar to the operations of the Respondent. Nall contends that such policy was applied to him in a manner different from that applied to other part-time employees of the Respondent. With the institution of the sortrac facility the Respondent desired to obtain qualified personnel for the keyer positions in the sortrac system from personnel who had exhibited qualities which would suggest that they could undertake the task of keyer in a successful manner. A cadre of such personnel was known to exist among the "primary sorters" then engaged by the Respondent in its Hub system. In order to accomplish this, the Company solicited personnel from its "primary sorter" employees to transfer into the sortrac division. Accordingly, it sought volunteers from among its then employed "primary sorters." Since this was a deviation from its prior practice of not transferring such personnel intra Company, it discussed the program with the Union. The Union expressed no opposition and the Company proceeded to select keyers. Among those employees of the Hub who were deemed qualified were Lee, Sloan, and Cline. These three persons, each "primary sorters," and each having the greater seniority among those primary sorters who expressed an interest in such transfer were transferred from the Hub to the sortrac division within the Center. The General Counsel does not contend that the transfer of Lee, Sloan, and Cline was made in derogation of any right to such transfer that Nall may have had; however, he contends that the transfer was a violation of the policy of the Respondent not to make such transfers. While it is true that any transfer would be a deviation from such policy Respondent contends that the transfer of the three "primary sorters" was an exception required by the initiation of the sortrac operation and not an abandonment of its policy.

The General Counsel contends that two employees Hester and Young were also transferred from the Hub to the sortrac. The evidence, however, establishes that Hester and Young were "charging the boxline" which prior to the inception of the sortrac system was a part of the Hub operation. With the inception of the sortrac, this operation became a part of the Center and integrated with the sortrac procedure. During the transition or installation of the sortrac system, the boxline was operated by the same personnel who had been operating it previously, thus creating an apparent transfer of these personnel, Hester and Young, to the sortrac system. However, since this was a temporary condition, neither Hester nor Young was in fact transferred to the sortrac division. They remained on the seniority list and the payroll schedule of the Hub and on the completion of the integration of the sortrac system into the Respondent's total

system their duties remained those of employees within the Hub. Therefore no transfer of these two personnel took place.

A third employee allegedly transferred was Zakee Muhammed. Muhammed was allegedly transferred from the Center to the Hub. This change of employment also took place during the integration of a new unit. However, this new unit was the reverse of that involving the sortrac and concerned itself with the Hub facilities. On this occasion again, a qualified person, Muhammed, was selected from the Center facility of the Respondent to transfer to the Hub division. In summary, the transfer of Lee, Sloan, Cline, and Muhammed was made in order to find a small cadre of potentially competent personnel to move into new operations of the Company and not a routine transfer from one division to another.

Nall contends that since he was an active shop steward for the Union that he drew upon himself the animosity of supervisory personnel, particularly since he frequently was instrumental in filing grievances arising out of supervisory personnel performing bargaining unit work. Several instances which Nall contends display this animosity arose during the time he had requested to be transferred to the sortrac system. In addition to the specific grievances filed by Nall, an occasion arose where he wished to represent an employee in a conference with the employee's supervisor. He was not permitted to do so and was excluded from the meeting, also on several occasions he was told to stay out of the sortrac area since his work involved that of the Hub. He was further told by supervisory personnel that his duties as shop steward were limited to the Hub operation and not that of the Center or the sortrac. Although the evidence suggests that an antagonism toward Nall had arisen on the part of several of the supervisors, there is no evidence that such antagonism in any way was a factor contributing to the refusal to grant Nall a transfer.

The Company contends that job changes within the Hub and various operations of the Respondent were not determined on the question of seniority but rather on the basis of job performance. Nall has not shown, in the evidence of this record, that he was qualified for the job which he sought. In October 1979, prior to his undertaking the duties of a shop steward, he was given an opportunity to test the "small sort" position in the Hub. Although no evaluation of his performance at such task appears in this evidence he was returned to his original position in the Hub as "pickoff man" and a new employee was hired and trained for the small sort function. Again, in October 1980, at his request, he was given an opportunity to take the test for the small sort task. He admitted that he failed to pass such test and although he apparently could have taken the test again he chose not to do so because "he felt no cooperation."

Under this aura and background Nall contends that the hiring of Tracey Newsome as a keyer in the sortrac from outside the Company was evidence of discrimination against him because of his union activities. The hiring and training of Newsome as a keyer in the sortrac are not inconsistent with the Company's policy. Company supervisors told Nall that he would not be transferred

because such transfers were against the Company's policy. Yet Nall contends that the hiring of Newsome was in some way a rejection of his transfer request and that such rejection was because of his union activities. Such a conclusion is not supported by the evidence in this case. It is clear, save for the occasions of the opening of a new function, that no transfers of part-time personnel between intra company functions have ever taken place. Exceptions arose in order for the Company to obtain a cadre with the qualifications deemed helpful in evaluating employees in the new function. The decision of the Company to seek keyers from their primary sort employees was based on the similarity of the ability required of a keyer. Not only did Nall not come within the job description of a "primary sorter" in the Hub, but also he had evidenced an inability to assimilate the necessary skills.

Accordingly, I find no connection between the refusal of the Respondent to transfer Nall from the Hub to the Center or the sortrac and Nall's activities as a shop steward or union member or union activist. Accordingly, I find that the General Counsel has not established that the Respondent has discriminated against Darwin Nall in refusing to transfer him as he requested because of Nall's union activities.

#### CONCLUSIONS OF LAW

1. Union Parcel Service is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Darwin Nall is an employee as that term is defined in Section 2(3) of the Act.

3. The General Counsel has failed to establish that the Respondent has engaged in unfair labor practices as alleged in the complaint.

On the above findings of fact and conclusions of law and on the entire record, I issue the following recommended

#### ORDER<sup>4</sup>

It is hereby ordered that the complaint be, and the same is hereby, dismissed in its entirety.

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<sup>4</sup> If no exceptions are filed as provided in Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.